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# **OPEN MEETING COVER SHEET**

## **COMMISSIONER MEMORANDUM**

<b>MEETING DATE:</b>	<b>November 2, 2023</b>
<b>DATE DELIVERED:</b>	<b>November 1, 2023</b>
<b>AGENDA ITEM NO.:</b>	<b>34</b>
<b>CAPTION:</b>	<b>Project No. 55633 – Winter Preparedness Work Session 2023</b>
<b>DESCRIPTION:</b>	<b>Commissioner McAdams Memorandum</b>

# *Public Utility Commission of Texas*

## **Commissioner Memorandum**

**TO:** Interim Chair Kathleen Jackson  
Commissioner Lori Cobos  
Commissioner Jimmy Glotfelty

**FROM:** Commissioner Will McAdams *WM*

**DATE:** November 1, 2023

**RE:** November 2, 2023 Open Meeting, Item No. 34 – Project No. 55633 – *Winter Preparedness Work Session 2023*

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The State of Texas has embraced a policy of deregulation of our electricity market within the framework of the Public Utilities Regulatory Act since 1995 with wholesale generation and 1999 for retail electric providers. Much of that statutory framework remains and has enshrined the policy that markets shall drive both the behavior and efficiency of the grid, not the government or quasi-governmental bodies. For twenty-eight years this framework has been maintained under the watchful eye of the Public Utility Commission.

In that time, the Commission has labored to create an environment of relative market certainty and regulatory stability. The most essential duty of a regulator regarding market certainty is to instill confidence in the rule of law, spirit of fair play, and competitive neutrality. In short, markets need to know the rules of the road.

ERCOT published their market notice on October 2<sup>nd</sup>, 2023, issuing a Request for Proposals (RFP) for Capacity to the tune of 3,000 megawatts. In response I believe the market was rightfully shocked, and our level of uncertainty rose dramatically. This was an extraordinary action taken by the market administrator and it has led me to pose some questions about the appropriateness of the RFP Process. ERCOT has justified this process by utilizing a novel application of ERCOT Protocols § 6.5.1.1(4). ERCOT also utilized a new report to justify the risk associated with the need case. That report, the Monthly Outlook for Resource Adequacy (MORA), was first published just last month. According to the MORA report, the expected chance of an energy emergency alert (EEA) is 4.34% if considering all winter scenarios and rises to 17.89% in December if only considering a Winter Storm Elliott-like weather. ERCOT has indicated that it “considers an EEA probability below 10% to indicate a low reserve adequacy risk for the monthly peak load day.” While I appreciate ERCOT using every tool at their disposal to ensure reliability, the Commission has not had an opportunity to discuss policy and methodology to provide guidance, transparency, and predictability to how ERCOT determines risk in establishing a short-term capacity market.

I believe that we must consider the following:

1. Does ERCOT have the authority to create a capacity market and procure that capacity in a two-month window without Commission or ERCOT Board oversight and guidance?

2. Should the short-term capacity market have a budget and cost cap?
3. Is the chance of EEA above 10% the right standard for triggering a capacity market?
4. Is assuming a 100% chance of Winter Storm Elliott-like weather occurring the right standard for determining the winter risk every winter? Should we consider the fact that according to ERCOT there is a 10% chance of such weather occurring? How should we factor worst case scenarios into our decision making?
5. Is a seasonal procurement of 3,000 MWs appropriate to reduce expected unserved energy from 470 MWh to 133 MWh for the worst-case scenario at 8am? At a value of lost load (VOLL) of \$5,000/MWh, the cost of 470 MWh of unserved energy for one hour would be expected to be \$2.4 million.
6. How does the retraction of the Notification of Suspension of Operations by Barney Davis affect the need for capacity?

I want to address that first concern here. ERCOT believes that its authority is enshrined in an obscure protocol developed in 2011 in NPRR 432 and in the RMR for capacity process.<sup>1</sup> ERCOT concedes that these precedents do not exactly match the proposed design nor manner in which the RFP has been constructed, but they believe an imminent reliability need warrants extraordinary actions. Commissioner Glotfelty was right to question whether this program is even legal.

As for the second concern, at the Work Session, we had instructed Commission Staff to coordinate with ERCOT and the IMM to formulate a budget and cost cap for the proposed RFP. ERCOT has insisted that no budget should be established until after the responses to the RFP are due. ERCOT asserts that a budget or cap may distort bids and drive market participants to submit higher offers, causing the budget to be divvied up among a few high bids and, ultimately, reducing the megawatts that may be procured.

It appears that ERCOT holds such a strong conviction in this position that it has refused to provide the Commission with a public budgetary framework. I find this troubling and disappointing. ERS is a clear prototype for the RFP and that service operates under a predetermined budget and cost cap. The system has not had issues efficiently procuring megawatts of demand response under this program in the past and, in fact, ERCOT does not even utilize the full ERS budget. I see no reason why the recent RFP would be any different.

Towards the third, fourth, and fifth concerns, At the last open meeting, I expressed apprehension that by not imposing a budget and cost cap the Commission would in effect establish a dangerous precedent for both the system and the statutorily enshrined market design – free reign to establish short-term capacity markets by fiat. To justify the RFP, ERCOT has presented the information in a manner that seems to lead to the desired result. To me, this indicates that they could use this protocol in the future to address needs they deem critical to the system and drive our market into a capacity construct without input from the PUC, the ERCOT Board of Directors, or

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<sup>1</sup> When NPRR 432 was initially proposed by ERCOT Staff on December 2, 2011 to expand the powers under Protocols § 6.5.1.1, the procurements it contemplated required approval by the ERCOT Board and the Commission. However, by the final approval in the Board Report on February 21, 2012, only approval by the Board remained. Two months later in NPRR 450, even Board approval had been eliminated. See: <https://www.ercot.com/mktrules/issues/NPRR432#keydocs> and <https://www.ercot.com/mktrules/issues/NPRR450#keydocs>.

the Legislature. If not restrained, the policy could be used to procure unlimited amounts of energy or demand response at whatever costs the staff of ERCOT deem “reasonable” without a system of due process we, as their regulator, are bound by duty and statute to provide.

Such a precedent would undermine confidence in the statutory framework designed to attract new dispatchable generation to be built within ERCOT on the eve of an election where the voters will decide whether to authorize \$5 billion in state-backed financing for such an effort.

As such, to allay these concerns I propose that we take official notice that the RFP for capacity is an interim or bridge solution under PURA § 39.1594(a)(1). By taking this step, I believe that we are establishing a legal basis for the program and provide stronger regulatory certainty for the ERCOT market. I would also ask Commission Staff to track that the program is complying with the requirements of PURA § 39.1594<sup>2</sup> and that the metrics used to justify it are thoroughly reviewed. Finally, I would ask Staff to come back next open meeting and opine as to whether the costs associated with this capacity program would be beyond a LSE’s control for existing contracts and if we should consider expanding or providing good cause exception to 16 TAC § 25.475 for this program. As discussed at the last open meeting, in the future, I believe that we should develop a policy requiring ERCOT to submit any future RFPs for capacity for Board and Commission approval.

I look forward to discussing this matter with you at the November 2, 2023 open meeting.

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<sup>2</sup> That compliance review will also have to take the recently approved ORDC floor bridging solution into account as well.